

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0624

ORIGINAL

WILLIAM RONALD HENDERSON,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

FILED

AUG 12 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

ERRATA

Undersigned counsel respectfully offers this errata to correct and clarify two items in the Motion to Withdraw as Counsel of Record filed by counsel on July 26, 2010.

On the first page of the motion, undersigned counsel stated, "Counsel has determined that an appeal would be frivolous or wholly without merit after reviewing the entire record and researching applicable statutes, case law, and rules." As explained in counsel's contemporaneously filed *Anders* Brief, there is actually at least one non-frivolous claim to be made at this point in this case. The claim would be a request for permission to file an out-of-time appeal from the district court's denial of Henderson's petitions for postconviction relief on the basis that the untimeliness of Henderson's notice of appeal was the result of

improper abandonment by his postconviction counsel. However, it is counsel's understanding that Henderson does not wish counsel to raise this claim.

Consequently, the sentence in the motion should correctly read, "After reviewing the record and researching applicable statutes, case law, and rules, counsel has not identified any non-frivolous claims that Henderson wishes to pursue."

The second page of the motion indicated that "Opposing counsel has been contacted regarding this motion and does not object." Contrary to this representation, on July 26, 2010, when the motion was filed, counsel for the State had not yet been contacted. Undersigned counsel has since contacted Assistant Attorney General Mark Mattioli regarding this matter, and Mr. Mattioli has indicated that he does not object to the Office of the Appellate Defender's July 26, 2010 motion to withdraw from Mr. Henderson's representation.

Counsel apologizes to the Court and opposing counsel.

Respectfully submitted this 12th day of August, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Errata
to be mailed to:


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DATED: _____

8/12/10

 Rachel Smith